



**Michigan Supreme Court  
State Court Administrative Office**

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John D. Ferry, Jr., State Court Administrator

**MEMORANDUM**

**DATE:** September 28, 2004

**TO:** Chief Circuit Judges, Presiding Family Division Judges  
**cc:** Friends of the Court, Family Division Administrators, Circuit Court Administrators

**FROM:** John D. Ferry, Jr.

**SUBJ:** 2004 Public Acts Affecting Friends of the Court and Circuit Courts

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Effective October 1, 2004, February 28, 2005, and June 30, 2005, new laws take effect that will change several practices in the courts and friend of the court (FOC) offices. Following is a summary of the major changes. **Bolded comments** after an explanation of the statutes provide information concerning new forms, processes, or other matters of which courts and FOCs should be aware. If you have further questions, please contact Steve Capps at 517-373-9318 or at [cappss@courts.mi.gov](mailto:cappss@courts.mi.gov).

**I. Effective October 1, 2004**

PUBLIC ACT 253 OF 2004 (formerly HB 4013)  
PUBLIC ACT 204 OF 2004 (formerly HB 4768)  
PUBLIC ACT 209 OF 2004 (formerly HB 4775)

**Paternity Act – Limitation on Retroactive Support, Division of Birth and Confinement Expenses, Abatement of Repayment of Birth and Confinement Expenses.**

- 1. Limitation on Retroactive Support.** Support may not be awarded in a paternity case for the period before the complaint was filed unless the defendant was avoiding service, threatened or coerced the complainant not to file, or otherwise delayed the imposition of a support obligation.
- 2. Division of Birth and Confinement Expenses.** The court must apportion confinement and birth expenses between the parents in paternity cases based on their ability to pay and on any other relevant factor. Expenses are to be apportioned in the same manner as other medical expenses are apportioned between the parties.

3. **Exception for Abuse Cases.** The court must apportion to the perpetrator any expenses that were determined in a separate proceeding to have been caused by a physical or sexual battery. Thus, if there had earlier been a criminal case, a PPO proceeding, or a tort case in which the battery had been determined, the expenses could be allocated only to the perpetrator. That issue should not be an original issue in the paternity proceeding,
4. **Exception for Medicaid Cases.** If Medicaid has paid the confinement and pregnancy expenses, the court cannot apportion those expenses to the mother. When Medicaid has paid the expenses, based on the father's ability to pay and any other relevant factor, the court shall determine how much of the expense the father must reimburse the state.
5. **Abatement of Birth and Confinement Expenses Upon Parties' Marriage:** Each order for confinement and pregnancy expenses entered by the court shall provide that, if the father marries the mother after the birth of the child and provides documentation of the marriage to the FOC, the father's obligation for payment of any remaining unpaid confinement and pregnancy expenses is abated subject to reinstatement after notice and hearing for good cause shown, including, but not limited to, dissolution of the marriage. The remaining unpaid amount of the confinement and pregnancy expenses owed by the father are abated as of the date that documentation of the marriage is provided to the FOC. Older orders are considered by operation of law to provide for the abatement of the remaining unpaid confinement and pregnancy expenses under the same circumstances.

**Courts must assure that the new language regarding abatement is placed in all new orders of filiation.**

**FOC offices may wish to notify payers on cases that the confinement and birth expenses abate upon marriage. See the [model press release](#) to be used to help notify the public.**

**The law does not state how long the expenses are eligible for reinstatement. Conceivably, the expenses could be reinstated for as long as the payer lives. Courts should consider whether statute of limitations or another standard applies.**

**Expenses apportioned to the mother would normally not be affected by the abatement provisions. The statute does not provide that the expenses apportioned to the mother may be abated upon remarriage. However, if the mother is actually ordered to pay the expenses to the father or a third party, the court should consider whether marriage serves to merge obligations owed by the parties to each other and so extinguish the debt (see [Sierra v Minnear](#), 341 Mich 182; 67 NW2d 115 (1954)).**

PUBLIC ACT 203 OF 2004 (formerly HB 4770)

PUBLIC ACT 205 OF 2004 (formerly HB 4771)

**Creation of Child Support Bench Warrant Fund and Change in Judgment and Order Entry Fees.**

**Child Support Bench Warrant Fund.** The new laws create a child support bench warrant fund. The Office of Child Support (OCS) will use money in the fund to contract with law enforcement agencies to serve child support bench warrants. The fund receives \$10 out of a fee that is assessed on every judgment or order entered in a child support, custody, or parenting time case.

The process and criteria for use of the fund for increased enforcement has not yet been determined. The fund is intended to provide additional resources to supplement ongoing efforts to serve bench warrants. It is not intended to change or replace current efforts to serve and process bench warrants.

**Judgment and Order Entry Fees.** The judgment entry fees under MCL 600.2529 have been changed. Formerly, before a judgment in a divorce case could enter, a person seeking entry of a divorce judgment was required to pay a fee of \$30, \$50, or \$70 depending on the type of service the FOC provided on the case. Those fees have been changed as follows:

1. The fee is assessed on all cases (not just divorce cases) in which the custody, support, or parenting time of a child is determined or modified.
2. The fee applies to post-judgment orders determining or modifying custody, support, or parenting time.
3. The fee is \$80 when the order or judgment involves custody or parenting time and \$40 when the order or judgment involves support only. The fee is \$80 when the order or judgment involves *both* support and custody or parenting time.

The fee may be waived in certain circumstances:

1. The fee is not collected when the person seeking entry of the judgment or order is a public official acting in his or her official capacity. This would include prosecutors filing support proceedings and FOCs conducting support review proceedings.
2. The fee is not assessed when the person seeking entry of the judgment or order files a consent order at the time of the initial pleading commencing the action. When the matter starts out as a contested proceeding and a consent order is later entered, the fee must be assessed.
3. The fee may be waived upon showing by affidavit of indigency or inability to pay, or for other good cause.
4. If the fee is waived for any reason and the action is contested, the court may order one or both of the parties to pay the fee. For example, the court may order a party to pay the judgment entry fee on a support modification proceeding initiated by the FOC if the

proceeding is contested. The same is true of a paternity or family support action case initiated by the prosecutor.

The fee does not apply to spousal support only cases.

**Distribution of Fees.**

Fees collected under the new statute should be distributed as follows:

1. \$10 of each fee must be sent to the state treasurer to go into the bench warrant fund.
2. \$70 of a fee for custody or parenting time judgment or order must be deposited into the friend of the court (215) fund to be used for custody and parenting time matters not funded by title IV-D.
3. \$30 of a fee for a support judgment or order is deposited into the 215 fund.

While the support entry fee must be treated as program income to offset child support reimbursement claims under title IV-D, the custody and parenting time entry fees most likely will receive different treatment. Therefore, please account for the deposit of these fees to the 215 fund separately.

**Per the Department of Treasury:**

**“The county should establish in the general agency fund (701), account number 228.60, "Due to State of Michigan—Child Support Bench Warrant Enforcement Fund," for the amount of the court fees (\$10) which is due to the State under Section 2529 of the Revised Judicature Act of 1961 (MCL 600.2529). This amount is accumulated each month and goes on line 2 of the revised fee transmittal form 57 for circuit courts.**

**The revised form 57 (10/04) must be used when remitting October 2004 collections due on or before November 20, 2004 and future monthly collections to the State Treasurer. The revised form will be available on Treasury web-site ([www.michigan.gov/treasury](http://www.michigan.gov/treasury)) on or before November 1, 2004 (click on “Local Government” then “Forms/Instructions”). Please destroy your supply of old forms. If you have any questions, please call (517) 373-3227 or write the office at:**

**Michigan Department of Treasury  
Local Audit and Finance Division  
P.O. Box 30728  
Lansing, Michigan 48909-8228”**

Please see the [revised schedule of fees](#).

## PUBLIC ACT 210 OF 2004 (formerly HB 4776)

### **Change in Referee Hearings.**

- The court is required to hear a matter if a person objects to the referee's recommendation, but the court may refuse to hear evidence that a party did not present at the referee hearing if the party had an opportunity to present that evidence and failed to do so.
- The court only needs to hear matters that are still contested and not the whole case.
- Pursuant to court rule, the court may issue a temporary order adopting the referee's recommendation until the court holds a final hearing in the case.

The current court rule has not been amended yet to implement this statute. The current rule is compliant with the new statute, but additional options are available under the statute that can only be implemented by an amendment to the court rule. A proposed amendment to MCR 3.215 to implement the new referee provisions has been published for comment. It can be found at: <http://courts.michigan.gov/supremecourt/Resources/Administrative/2004-40.pdf>

### **Funding.**

- Except as otherwise required by federal law on cases that are eligible for funding under title IV-D, the FOC is only required to perform activities under the Friend of the Court Act or the Support and Parenting Time Enforcement Act when a party in the case has requested title IV-D services.

The new provision is designed to allow the FOC to receive funding on all cases to which title IV-D applies. When the case is otherwise eligible for title IV-D but a person refuses to request the services, the FOC may refuse to provide services under the Friend of the Court Act and the Support and Parenting Time Enforcement Act unless federal law requires the service to be provided.

This provision does **not** relieve FOCs of the obligation to provide services on cases involving only spousal support. Both the Friend of the Court Act and the Support and Parenting Time Enforcement Act define support to include spousal support. This means that all support collection and enforcement measures in both acts apply.

Recent communications from the OCS stating that offices should not use the AL debt type (alimony) have raised questions about the Michigan State Disbursement Unit's ability to handle spousal support only cases. The OCS communication eliminates use of the AL debt type because it was designed for property settlement. OCS has directed that FOCs use the debt type SS to continue to collect spousal support.

### **Citizen Advisory Committees (CACs).**

- The CAC is now a local option. Local county boards may establish a CAC if they wish.
- The membership of the CAC (if it is established) is clarified.
- The CAC must honor any SCAO policies directed to the FOCs concerning CACs.

**Note: CACs are *not* judicial branch entities. We have included this information for information only.**

## **II. Effective February 28, 2005**

PUBLIC ACT 206 OF 2004 (formerly HB 4772)

Numerous changes were made to the Support and Parenting Time Enforcement Act. They are:

### **1. Support Enforcement**

- Judges who find that a person is in contempt under section 35 for failure to exercise due diligence or for failure to attend a work program must refer unemployed payers to work programs unless the judge can state a good reason in the order or on the record for not making a referral.
- The Act adds a new basis for finding a person in contempt in a nonpayment of support action. It allows a court to find a person in contempt when the person has failed to pay support and refuses to participate in a work program after being referred to one by the FOC.
- The Act allows the court to impose a fine of \$100 when a payer is found in contempt. The fine is deposited into the 215 fund.

### **2. Income Withholding**

- The Act provides procedures for contesting income withholding. There are two types of contests. The first involves contesting a notice that implements income withholding when it is not immediately effective. The second involves an administrative adjustment to income withholding to change the amount collected for arrears. Under both processes, the income withholding or a change in the amount of income withholding occurs *immediately* subject to being changed back after a hearing. Under both processes, the time for objection was modified from 14 days to 21 days.
- The Act allows a person to object to implementation of income withholding or a change in the amount of the withholding by filing an objection and having a hearing before a judge or referee. Before such a hearing, the FOC can have an administrative meeting to settle an objection to the amount of, or to the

imposition of, income withholding. A person may only object to income withholding based on a mistake of fact concerning the identity of the person against whom the FOC is implementing the withholding or based on a mistake concerning the amount due. A person may object to a *change in the amount collected for arrears* for the same reasons, and also because the new amount being withheld for arrears would produce an unjust or inappropriate result.

**Each circuit court should establish a procedure for determining when the FOC will conduct an administrative meeting to settle an objection and a process for setting hearings on objections to income withholdings and administrative adjustments. The procedures should allow for an informal meeting (in person or by phone) between an FOC employee and the person who receives the notice. If the FOC cannot settle the objection, or if the circuit court does not want the FOC to attempt to resolve the objection, the FOC should set a hearing before a judge or referee to resolve the objection.**

- The Act now allows any IV-D agency to enforce against an employer through contempt proceedings. Formerly, the Act was silent concerning who could enforce the order and how it could be enforced. The enforcement action can be filed in any county in which the employer does business. This allows a single action in one circuit for violations that may have occurred in multiple locations. There is no specific direction in the statute to any particular IV-D agency to enforce against employers. It is logical to have a central agency or office do the enforcement. However, until there is further discussion between the IV-D agencies, FOC offices should, on a case by case basis, determine whether they will initiate enforcement against employers. FOC offices should provide prior notice to OCS and SCAO when planning to initiate enforcement action to avoid duplication of effort and avoid conflicting actions.

### **3. Clarification of FOC Responsibilities to Enforce Under Other Acts.**

- Section 27 of the Act specifies that the other remedies available in that section are actions the *court* may take and that *IV-D* agencies are *not* authorized to pursue remedies under applicable laws except as specifically authorized under statute or court rule.

**New income withholding notice forms are being developed to implement the Act.**

PUBLIC ACT 211 OF 2004 (formerly HB 4792)

### **Arrearage Repayment Orders and Debt Relief.**

#### ***Repayment Orders***

- At the request of a payer, the court may approve a repayment order that restructures the way a child support debt is required to be paid.

- If the parties agree, the court can approve a repayment plan that discharges part of the child support owed to an *individual* payee.
- If the payer can satisfy certain conditions, the court can approve a repayment plan that discharges part of the child support owed to the *state*. The payer must establish by a preponderance of evidence all of the following:
  - The arrearage did not arise because the payer engaged in conduct designed for the purpose of avoiding paying the support.
  - The plan is in the best interest of the parties and children.
  - The payer has no ability now or in the foreseeable future to pay the arrears without the plan.
  - The plan will pay a reasonable portion of the arrears over a reasonable time based on the payer's ability to pay and:
    - The plan lasts at least 24 months.
    - If a payer makes at least poverty level wages the plan must extend an additional month beyond 24 months for each \$1,000.00 above poverty level the payer earns.
  - The OCS has at least 56 days notice of the motion and has responded. If OCS fails to comment, the court may:
    - Deny the plan if the payer does not meet the payer's burden of proof.
    - Approve the plan if the payer satisfies the burden by *clear and convincing* evidence.
    - Appoint a receiver or examiner in equity to review the plan, make recommendations, or monitor the plan.

The court can impose special conditions such as enrollment in drug and alcohol programs, participation in parenting classes, or enrollment in work programs to help the payer complete the plan.

### **III. Effective June 30, 2005**

PUBLIC ACT 207 OF 2004 (formerly HB 4773)

#### **Administrative Review and Support Modification Procedure.**

The following new support modification procedure will be implemented effective June 30, 2005.



- The obligation to review at the request of a party (or automatically when a person is receiving public assistance) is changed from once every two years to once every three years.
- The FOC has 14 days (changed from 15 days) to determine whether to initiate a review at the request of a party.
- The Act added to the reasons the FOC *must* review the support order outside the three year cycle. It requires a review when a person is incarcerated for a period of more than one year or released from incarceration for a period of more than one year. It also requires a review when a party provides evidence of a substantial change in circumstances as set forth in the child support formula guidelines.
- The FOC initiates reviews by requesting information from the parties. Previously, the FOC was required to advise the parties it was initiating a review.
- No sooner than 21 days, and no later than 120 days, after requesting the information the FOC may make a recommendation to modify support. Previously, the FOC was required to give 30 days notice of the hearing to modify support.
- After the recommendation is made, the parties have 21 days to object. If neither party objects, the recommendation will be made into a new court order for support. If a party objects, a hearing will be held. The objection period to an FOC determination not to review the support amount is also reduced to 21 days from 30 days.
- The FOC may impute income (treat the person as earning income that the person does not earn because of a voluntary reduction in income or when the FOC has information of a person's ability to earn but no income information) when the person fails to provide information. Previously, the FOC could only impute when it knew the actual income of a party.
- The FOC is authorized to schedule a joint meeting with the parties to attempt to settle support issues. Using the joint meeting process allows the FOC to schedule a meeting with the parties, obtain information at the meeting, and make a recommendation that will become an order (unless a party objects within 21 days) without going through the entire review process in advance.
- The information the FOC must provide in its recommendation is reduced. The FOC must provide a statement of the calculations on which the recommendation is made instead of the former requirement that the office make available a written report, transcript, recommendation, and supporting documents or a summary of supporting documents prepared or used by the office.
- At a hearing based on an objection to an FOC's recommendation, the trier of fact may consider the FOC's recommendation as evidence to prove a fact relevant to the support calculation when no other evidence is presented concerning that fact, if the parties agree or no objection is made to its use for that purpose.

- The court shall not require proof of a substantial change in circumstances to modify support pursuant to an FOC review and modification proceeding. A party must prove a substantial change in circumstances which includes a change in the amount of support recommended by the formula.

**SCAO has drafted a modification of form FOC 33 to implement the new law.**

PUBLIC ACT 208 OF 2004 (formerly HB 4774 [see also SB 485])

*Effective, in part, June 30, 2004, and, in part, June 30, 2005.*

### **Surcharge Modification and Relief**

#### **Effective June 30, 2004**

##### ***Amount of Surcharge***

- 1% plus the average interest rate on five-year treasury notes during the six months preceding July 1 and January 1. Effective July 1, 2004, the rate is 4.357 (3.357% plus the statutory 1%).
- The surcharge does not compound.

##### ***Exception to Surcharge***

- No surcharge is assessed for arrears created under a new (this does not apply to a modification) order that has a retroactive effect.

#### **Effective June 30, 2005**

##### ***Other Exceptions to Surcharge***

- No surcharge will be assessed when the payer pays 90% or more of the support due in the current six month cycle.
- No surcharge is assessed if the court waives or suspends it for good cause.

##### ***Waiver or Suspension of Surcharge Allowed When:***

- The payer or FOC files a motion for a repayment plan; and
- The court finds that the arrearage did not arise from conduct of the payer exclusively to avoid obligation; and
- The payer has no ability now or in the foreseeable future to pay the arrearage absent relief; and

- The court finds that the plan is reasonable.
- The suspension or waiver affects only a surcharge that accrues after June 30, 2005.

**New forms for FOC Actions:**

Modifications have been proposed for the following forms to reflect changes in the law:

FOC forms 6, 23, 23, 33, 34-38, 56a, 56b, 71, 79, and 90. Copies will be provided in a separate memorandum when they are finalized. All revised forms will be released by December, 2004.